

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

US Foods, Inc.

Employer

and

Case 14-RC-264140

Teamsters Local 618

Petitioner

DECISION AND DIRECTION OF ELECTION

On August 5, 2020,¹ Teamsters Local 618 ("Petitioner") filed its original petition in this case with the National Labor Relations Board ("Board"). By this petition, Petitioner seeks to represent all full-time and regular part-time mechanics and fuelers employed by US Foods, Inc. ("Employer") out of its facility located at 8543 Page Avenue, St. Louis, Missouri.

The only matter at issue is whether the election should be conducted by manual or mail ballot method. Election arrangements, including the voting method, are not litigable matters at a pre-election hearing. Sec. 102.66(g)(1) of the Board's Rules and Regulations. See also, Representation-Case Procedures, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)). On August 24, the parties entered into a stipulated record and shortly after, pursuant to that stipulation, the Employer submitted its position to me on the voting method and details of election.²

Based on the stipulated record, having reviewed the parties' positions, and having considered the factors discussed below, I have determined that because of the extraordinary circumstances presented by the ongoing COVID-19 pandemic, the Board will conduct this election by mail ballot.

POSITIONS OF THE PARTIES

On the face of the petition, Petitioner seeks a mail ballot election.

The Employer contends a manual election can be safely conducted in the showroom of its facility. It notes that, as a distributor of food and supplies, it has been deemed essential since the onset of restrictions related to the COVID-19 pandemic. The Employer states that its "protocols at a minimum conform with CDC, HHS and other government protocols," highlighting that it administers socially distanced temperature checks and health questionnaires before allowing individuals to enter its facility.

¹ All dates are in 2020 unless otherwise noted.

² The Petitioner did not submit a position statement.

According to evidence, the Employer asks if, in the past 24 hours, have you had signs of fever, fever (100.4°F or higher), cough, or shortness of breath; and, in the past 14 days, have you had close contact with a diagnosed individual.” An affirmative answer to any of the questions or a temperature reading over 100.4°F bars entry.

The Employer “bleach[es] and sanitiz[es] all surfaces and equipment every hour and maintains ample supplies of hand sanitizers for the employees and visitors.” It also offered to make “sanitizer, masks, wipes and gloves ... available in the voting area.” However, there is no record evidence personal protective equipment (“PPE”) or social distancing are required outside of the election and health screening areas.

In addition, the Employer offers to apply all the protocols in NLRB General Counsel Peter Robb’s “Suggested Manual Election Protocols” memorandum (GC 20-10) for the election.

The Employer proposes holding the election in its Show Room, which measures 75-feet by 35-feet and provides enough room for six-feet between all election participants. It also proposes a 2½-hour voting period for approximately six eligible voters to allow for staggered voting, where no more than one voter would need to be in the polling place at any given time.³ There is no evidence regarding the Show Room’s ventilation or air circulation.

The Employer did not provide the number of employees who have, within the last 3 months, tested positive for COVID-19, exhibited symptoms of COVID-19, and/or were subject to quarantine for any reason related to COVID-19, including but not limited to being in direct contact with someone who tested positive or exhibited symptoms of the virus.⁴

The parties agreed the election, whether by mail or manual balloting, should commence on, but not before, September 16, and no later than September 23.

BOARD’S STANDARD

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives and the Board, in turn, has delegated the discretion to

³ The Employer also offered to screen potential voters at a “‘wellness station’ outside the voting area solely for the employees voting to ensure that no one has exhibited any symptoms prior to entering the hallway leading to the voting area.” There is no indication the Petitioner agrees to this proposal or to having an agent of Employer control access to the proposed polling place above and beyond access to the facility.

⁴ This information was to be included in the written position statement of any party proposing a manual election pursuant to the stipulation of record.

determine the arrangements for an election to Regional Directors. *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998) (citing *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946); *Halliburton Services*, 265 NLRB 1154, 1154; *National Van Lines*, 120 NLRB 1343, 1346 (1958)). This discretion includes the ability to direct a mail ballot election where appropriate. *San Diego Gas* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a general rule, be conducted manually. NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11301.2.⁵ However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Ibid.* This includes a few specific situations addressed by the Board, including where voters are "scattered" over a wide geographic area, "scattered" in time due to employee schedules, in strike situations, or other "extraordinary circumstances." *San Diego Gas*, above at 1145.

Consistent with the recognition of the discretion afforded to Regional Directors, on April 17, the Board issued a "COVID-19 Operational Status Update,"⁶ which states in pertinent part:

Representation petitions and elections are being processed and conducted by the regional offices. Consistent with their traditional authority, Regional Directors have discretion as to when, where, and if an election can be conducted, in accordance with existing NLRB precedent. In doing so, Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state and local laws and guidance.

The Board has recognized the COVID-19 pandemic to be extraordinary circumstances as contemplated by *San Diego Gas* since May. See, e.g., *Atlas Pacific Engineering Co.*, 27-RC-258742 (unpublished May 8, 2020) (relying on "the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting this election should

⁵ I note the provisions of the Casehandling Manual are not binding procedural rules. The Casehandling Manual is issued by the General Counsel—not the Board—and is intended to provide guidance to regional personnel in the handling of representation cases. *Patient Care*, 360 NLRB 637, 638 (2014) (citing *Solvent Services*, 313 NLRB 645, 646 (1994); *Superior Industries*, 289 NLRB 834, 837 fn. 13 (1988)); *Aaron Medical Transportation, Inc.*, 22-RC-070888 (unpublished 2013) (citing *Hempstead Lincoln Mercury Motors Corp.*, 349 NLRB 552, 552 fn.4 (2007); *Queen Kapiolani Hotel*, 316 NLRB 655, 655 fn.5 (1995)). See also *Sunnyvale Medical Clinic*, 241 NLRB 1156, 1157 fn. 5 (1979).

⁶ <https://www.nlr.gov/news-outreach/news-story/covid-19-operational-status-update>.

remain on mandatory telework” to deny review of Regional Director’s decision to order a mail ballot election).

On July 6, General Counsel Peter Robb issued GC 20-10, a memorandum setting forth suggested manual election protocols, while specifically noting that it is not binding on Regional Directors because the Board—not the General Counsel—has authority over matters of representation. The suggested protocols include: polling times sufficient to accommodate social distancing without unnecessarily elongating exposure among Board Agents and observers; the employer’s certification in writing that the polling area is consistently cleaned in conformity with CDC standards; a spacious polling area, sufficient to accommodate six-foot distancing; separate entrances and exits for voters; separate tables spaced six feet apart; sufficient disposable pencils without erasers for each voter to mark their ballot; glue sticks or tape to seal challenge ballot envelopes; plexiglass barriers of sufficient size to protect the observers and Board Agents; and provision of masks, hand sanitizers, gloves, and disinfecting wipes.

The General Counsel’s suggestions also include the Employer’s self-certification 24 to 48 hours before a manual election for how many individuals have been present in the facility within the preceding 14 days who have tested positive for COVID-19; who have been directed by a medical professional to proceed as if they have tested positive for COVID-19; who are awaiting results of a COVID-19 test; who are exhibiting certain symptoms of COVID-19; or who have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19. While the Employer’s protocols involve temperature readings and a short questionnaire for limited symptoms of COVID-19,⁷ the record does not indicate it tracks any of the above information for employees or customers in the building. This lack of information makes it difficult to confirm that a manual election will indeed be safe for all involved during the present pandemic. Moreover, following issuance of GC 20-10, the CDC updated its COVID-19 pandemic planning scenarios and clarified the definition for the percent of transmission occurring prior to symptom onset (pre-symptomatic transmission). The CDC’s “current best estimate” is that 50% of COVID-19 transmission occurs while people are pre-

⁷ The Employer and GC 20-10 list only fever, cough, and difficulty breathing or shortness of breath in their questionnaires and certifications. St. Louis County adds runny nose, sore throat, tiredness, aches and pains, and diarrhea. However, the CDC and Missouri both list 11 symptoms—fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea. They also note: “This list does not include all possible symptoms.” “Symptoms of Coronavirus.” CDC. <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (accessed August 31, 2020); “What are the symptoms?” Missouri Department of Health and Senior Services. <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/prevention.php> (accessed August 31, 2020).

symptomatic and 40% of people with COVID-19 are asymptomatic⁸ and would neither be identified nor have sought testing. Similarly, the CDC's August 26 update for "Travel during the COVID-19 Pandemic" continues to warn travelers: "You may feel well and not have any symptoms, but you can still spread COVID-19 to others."⁹ Additionally, GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling the manual election, which would delay resolution of the question concerning representation. A mail ballot election avoids these concerns.

Recently, the Board affirmed the ongoing COVID-19 pandemic constitutes extraordinary circumstances and it will continue to consider whether manual elections should be directed "based on the circumstances then prevailing in the region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10." See *Brink's Global Services USA, Inc.*, 29-RC-260969 (unpublished July 14, 2020) (denying review of Regional Director's decision to order a mail ballot election); *Sunsteel, LLC*, 19-RC-261739 (unpublished August 4, 2020) (same); *PACE Southeast Michigan*, 07-RC-257046 (unpublished August 7, 2020) (same); *Tredroc Tire Services*, 13-RC-263043 (unpublished August 19, 2020) (same); *Daylight Transport, LLC*, 31-RC-262633 (unpublished August 19, 2020) (same).¹⁰

Current State of the Pandemic in the Relevant Area

In assessing the local conditions, I must consider the state of the pandemic in Missouri, particularly the St. Louis area, where the Employer is located and through which the Board agent and election participants must travel. The United States and the State of Missouri are currently in a declared state of emergency due to COVID-19.¹¹ As of August 30, nearly 6 million people in the United States had contracted COVID-19 and

⁸ "COVID-19 Pandemic Planning Scenarios" (updated July 10, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (accessed August 31, 2020).

⁹ "Travel during the COVID-19 Pandemic" (updated August 26, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html> (accessed August 31, 2020).

¹⁰ On August 25, the Board granted review in *Aspirus Keweenaw*, 18-RC-263815, and issued a stay of a directed mail-ballot election. However, the Board has not issued a ruling on that matter that impacts my findings in this case.

¹¹ "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak" (March 13, 2020). The White House. <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (accessed August 31, 2020); "Executive Order 20-12" (June 11, 2020). Missouri Secretary of State. <https://www.sos.mo.gov/library/reference/orders/2020/eo12> (extending state of emergency and certain other executive orders related to COVID-19 through December 30, 2020) (accessed August 31, 2020).

over 182,000 had died.¹² Missouri reported 83,655 COVID-19 cases, with 1,508 fatalities,¹³ the rolling seven-day average of positive cases had steadily increased over the past week,¹⁴ and the seven-day average positivity rate was 12.5%.¹⁵ Hospitalizations in Missouri related to COVID-19 exceeded 1,000 for the first time on August 28 and, again, on August 30.¹⁶ St. Louis County, where the Employer's facility is located, accounts for nearly a quarter of Missouri's COVID-19 cases, nearly half its deaths, and has a seven-day average positivity rate of 9%.¹⁷

Current Federal, State, and Local Guidance

The United States Centers for Disease Control and Prevention (CDC) explains that COVID-19 is primarily spread from person to person.¹⁸ A person may become infected when an "infected person coughs, sneezes or talks" or by "touching a surface or object that has the virus on it, and then by touching your mouth, nose or eyes," so its guidance recommends "limit[ing] in-person contact as much as possible."¹⁹ Moreover, the CDC's August 26 update for travelers continues to maintain that "[b]ecause travel increases your chances of getting infected and spreading COVID-19, **staying home is**

¹² "CDC COVID Data Tracker." U.S. Centers for Disease Control and Prevention. <https://covid.cdc.gov/covid-data-tracker/#cases> (accessed August 31, 2020).

¹³ "COVID-19 Outbreak." Missouri Department of Health and Senior Services. <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/> (accessed August 31, 2020).

¹⁴ "Missouri Coronavirus Map and Case Count." *New York Times*. <https://www.nytimes.com/interactive/2020/us/missouri-coronavirus-cases.html> (accessed August 31, 2020).

¹⁵ "Missouri COVID-19 Dashboard: The Spread of COVID-19 in Missouri." Missouri Department of Health and Senior Services. <http://mophep.maps.arcgis.com/apps/MapSeries/index.html?appid=8e01a5d8d8bd4b4f85add006f9e14a9d> (accessed August 31, 2020).

¹⁶ *Id.*

¹⁷ "COVID-19 Statistics - St. Louis County, Missouri." St. Louis County Government. <https://www.stlcorona.com/resources/covid-19-statistics> (accessed August 31, 2020).

¹⁸ I take administrative notice of the information, guidance, and recommendations of the CDC regarding COVID-19. See "Coronavirus (COVID-19)" and pages linked therein. <https://www.cdc.gov/coronavirus/2019-ncov/> (accessed August 31, 2020).

¹⁹ "Frequently Asked Questions, Spread" (updated August 27, 2020). U.S. Centers for Disease Control and Prevention. <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (accessed August 31, 2020).

the best way to protect yourself and others from getting sick” (emphasis in original).²⁰

Its recommendations for dealing with this public health threat include, among others, the avoidance of large gatherings, the use of cloth face coverings, good personal hygiene, and social distancing. The CDC further states that the virus can survive for a short period on some surfaces, and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one’s mouth, nose, or eyes; however, “it is unlikely to be spread from domestic or international mail, products or packaging.”²¹ To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises: “After collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol.”²² Ultimately, the CDC highlights the **“best way to prevent illness is to avoid being exposed to this virus”** (emphasis in original).²³

At the outset of the pandemic, Missouri was under stay-at-home orders from April 6 through May 3. By June 12, statewide restrictions had been lifted, in favor of local officials “put[ting] further rules, regulations, or ordinances in place.”²⁴

On August 12, the City of St. Louis issued Health Commissioner’s Order No. 13, which recognizing “a resurgence of COVID cases is recurring, there is sustained increase in percent positivity in the City of St. Louis and the St. Louis Metropolitan Area” and a more than doubling of the percent positivity rate.²⁵ The order also limits many places of public accommodation to 50% capacity or less.

²⁰ “Travel during the COVID-19 Pandemic” (updated August 26, 2020). U.S. Centers for Disease Control and Prevention. <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> (accessed August 31, 2020).

²¹ “Coronavirus Disease 2019 (COVID-19), Frequently Asked Questions, Prevention, Am I at risk for COVID-19 from mail, packages, or products?” <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (accessed August 31, 2020).

²² “Running Essential Errands.” <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (last accessed August 31, 2020).

²³ “How to Protect Yourself & Others.” <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last accessed August 31, 2020).

²⁴ “Governor Parson Announces Missouri Will Fully Reopen, Enter Phase 2 of Recovery Plan on June 16” (June 11, 2020). Missouri Governor Michael L. Parson. <https://governor.mo.gov/press-releases/archive/governor-parson-announces-missouri-will-fully-reopen-enter-phase-2-recovery> (accessed August 31, 2020).

²⁵ “Health Commissioner’s Order No. 13.” City of St. Louis. <https://www.stlouis-mo.gov/government/departments/health/communicable-disease/covid-19/orders/health-commissioner-order-13.cfm> (accessed August 31, 2020).

While the CDC has not specifically addressed Board elections; it has issued recommendations based on the following guiding principles:

The more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread. Elections with only in-person voting on a single day are higher risk for COVID-19 spread because there will be larger crowds and longer wait times.

Specifically, the CDC instructs officials to “[c]onsider offering alternatives to in-person voting if allowed” and recommends voters **“[c]onsider voting alternatives available in your jurisdiction that minimize contact.”** Voting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19” (emphasis in original).²⁶ Following these recommendations, Missouri passed legislation expanding absentee and mail-in voting on June 4. Specifically, registered voters who have contracted, or are in an at-risk category for, COVID-19 may vote absentee without the need for the state’s notarization requirement while, for the first time, any registered voter may request a mail-in ballot.²⁷

A MAIL BALLOT ELECTION IS APPROPRIATE

Whether a mail ballot election is appropriate in this case requires considering both the public health concerns presented by the COVID-19 pandemic and the Board’s stated preference for manual elections. The Employer correctly notes manual elections are the preference of the Board, and I recognize the “potential problems” associated with mail ballot elections referenced by the Employer are some of the reasons the Board has traditionally preferred manual elections.²⁸ I do not discount those concerns.

Absent the present pandemic, a manual election would almost certainly be held in this case. The employees are neither “scattered,” in the sense of worktime or workplace, nor is there a strike, lockout, or picketing. Prior to the current pandemic the Board regularly conducted manual elections under similar circumstances, and the

²⁶ “Considerations for Election Polling Locations and Voters.” U.S. Centers for Disease Control and Prevention. <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (accessed August 31, 2020).

²⁷ “SB 631 Modifies provisions relating to elections.” Missouri Senate. https://www.senate.mo.gov/20info/BTS_Web/Bill.aspx?SessionType=R&BillID=26837998 (accessed August 31, 2020).

²⁸ The Board’s general preference for manual elections is not to be interpreted as a suggestion that mail balloting is somehow inferior or a less reliable or effective means of determining employees’ representational desires. See, e.g., *London’s Farm Dairy, Inc.*, 323 NLRB 1057, 1058 (1997) (showing the Board has conducted mail ballot elections since its earliest days).

location and polling period proposed by the Employer are consistent with how the Board would typically schedule such an election.

The Employer argues there has been diminished voter participation in mail ballot elections since April, when the Board resumed conducting elections, compared to manual elections prior to the COVID-19 pandemic. However, the Board finds such arguments to be speculative and false equivalencies.

[B]ecause mail ballot elections have, by design, largely been limited to situations where factors were present which were likely to inhibit voter participation if the election were conducted manually, there is no reason to believe that participation in those particular elections would necessarily have been higher had they been manual elections.

San Diego Gas, above at 1146. While I do not discount the concern regarding potential voter participation issues and acknowledge the potential risks of mail delivery procedures on the outcome of a mail ballot election, there is no indication the United States Postal Service in the St. Louis area is unable to deliver mail or that there are any impediments to voter participation. Further, I note that any mail ballot election, held at any time under any circumstances, includes procedures by which an employee who has not received a ballot in a timely manner may receive a duplicate.

Additionally, the Employer opines that a mail ballot election poses a greater risk due to the intermingling of the ballot with other letters at the United States Postal Service compared to its proposed COVID-19 protocols.²⁹ However, this discounts the CDC's guidance, above, that "it is unlikely to be spread from domestic or international mail, products or packaging"³⁰ and, to avoid the unlikely possibility of transmission, "[a]fter collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol."³¹ Moreover, the return date for mail ballots can be extended to accommodate voters who

²⁹ The record contains no evidence indicating where employees reside or how they commute to work. Anyone traveling in a way that brings them in direct contact with another person (e.g., carpooling, ridesharing, public transit) increases the chance of spreading the virus. "Daily Activities and Going Out" (updated July 30, 2020). CDC. <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/going-out.html> ("In general, the more closely you interact with others and the longer that interaction, the higher the risk of COVID-19 spread") (accessed August 31, 2020).

³⁰ "Coronavirus Disease 2019 (COVID-19), Frequently Asked Questions, Prevention, Am I at risk for COVID-19 from mail, packages, or products?" <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (accessed August 31, 2020).

³¹ "Running Essential Errands." <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (last accessed August 31, 2020).

wish to quarantine their mail³² or who may not be regularly residing at their mailing address.

Ultimately, my decision in this case is based on the “extraordinary circumstances” presented by this public health emergency. I recognize a degree of reopening has begun, in the United States generally and in Missouri specifically. At the same time, it is not disputed that COVID-19 remains present in the community and presents a well-established and significant health risk. There is not an easily identifiable bright line that can designate when “extraordinary circumstances” have passed while the increased risk of transmission in group activities remains. The difficulty in trying to find a metric on which to base such a decision is demonstrated by the opposing evidence of the rising number of cases in Missouri and St. Louis County but the lowered governmental restrictions.

As the Board has made clear, this is a question of discretion. While the Employer has presented a comprehensive plan for a manual election, including compliance with suggested protocols in GC 20-10, I find the circumstances of this case make it appropriate to hold a mail ballot election. I find that the extraordinary circumstances presented by the COVID-19 pandemic remain present here for several reasons. First, my decision is based on the number of COVID-19 cases in Missouri, the undisputed continued presence of the virus in the St. Louis area, and the severity of the COVID-19 risk. In relying on these considerations, I do note what appears to be a recent increase in cases in Missouri, the greater St. Louis area, and St. Louis County. It is not possible for me to know if this represents an increasing number of infections, a reflection of more widespread testing, better reporting, or simply a momentary spike in cases. However, it does raise the possibility that, if I order a manual election, I will be directing voters and others to congregate under circumstances more dire than those faced today. In any manual election voters will still physically come together in a single location, even if dispersed over time and socially distanced. This represents an increased risk of some degree to all those participating. Although the Employer’s protocols and those suggested in GC 20-10 may mitigate some of the risk of transmission of COVID-19, I do not believe that the protocols would provide sufficient mitigation to justify holding a manual election given the circumstances present in this case.

Moreover, if an employee tests positive for COVID-19, suspects they may have COVID-19 due to symptoms,³³ has an elevated temperature, or must be quarantined due to COVID-19 exposure, they will be deprived of their vote in a manual election. A

³² “New coronavirus stable for hours on surfaces” (March 17, 2020). National Institutes of Health. <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (COVID-19 remains detectable “up to 24 hours on cardboard”) (accessed August 31, 2020).

³³ Use of only the three symptoms listed by the Employer and GC 20-10 would greatly increase the risk of infection while use of the 11 symptoms listed by the CDC and Missouri Department of Health would increase the chance that an eligible voter would not be able to cast a ballot.

mail ballot election avoids this significant pitfall and ensures all have an opportunity to vote regardless of their exposure to COVID-19 or health status. Furthermore, there is no known date at which the guidance and circumstances I have described above will change. As a result, a mail ballot election in this matter will allow for holding of the election “at the earliest date practicable” consistent with the Section 102.67(b) of the Board’s Rules and Regulations.

Again, the Employer’s plan to address these risks is comprehensive, attempting to place as many barriers as possible between participants. I find, ultimately, a safer manual election still involves physical interactions, congregating, and as such increased risk. Here, the Board has an established process that avoids these risks, its mail ballot procedure. While mail balloting may not be the Board’s general preference, it is one of the ways in which the Board conducts an election when circumstances dictate. Under the present circumstances I find it prudent to order a mail ballot election.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.³⁴

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a voting group appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time mechanics and fuelers employed by the Employer at its St. Louis, Missouri facility.

³⁴ The parties stipulated to the following commerce facts:

The Employer, a Delaware corporation with an office and place of business located in St. Louis, Missouri, is engaged in the non-retail sale of distribution of food and supply items to restaurants and institutions. During the last twelve months, a representative period of time, the Employer had gross revenues in excess of \$500,000, and purchased and received goods at its St. Louis, Missouri facility valued in excess of \$50,000, directly from suppliers located outside the State of Missouri.

Excluded: All other employees, professional employees, managerial employees, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Teamsters Local 618**.

A. Election Details

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate voting group at 3:00 p.m. on **Friday, September 18, 2020**, from the office of the National Labor Relations Board, Region 14 Office, 1222 Spruce Street, Room 8.302, St. Louis, Missouri 63103-2829. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Friday, September 25, 2020**, or otherwise requires a duplicate mail ballot kit, should communicate immediately with the National Labor Relations Board by calling the Region 14 Office at (314) 539-7770.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 14 Office by 12:00 p.m. (noon) CDT on **Friday, October 16, 2020**. The mail ballots will be counted on **Friday, October 23, 2020** at 10:00 a.m. at a location to be determined, either in person or otherwise, after consultation with the parties, provided the count can be safely conducted on that date. In order to be valid and counted, the returned ballots must be received by the Region 14 Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **August 22, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the Regional Director and the parties by **Tuesday, September 8, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Subregion and served electronically on the other parties named in this decision. The list may be electronically filed with the Subregion by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

September 3, 2020

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

DATED at St. Louis, Missouri, this 3rd day of September 2020.



William B. Cowen, Acting Regional Director
National Labor Relations Board, Region 14
1222 Spruce Street, Room 8.302
St. Louis, Missouri 63103-2829